

SECRET

OGC REVIEW COMPLETED

23 SEP 1963

MEMORANDUM FOR THE RECORD

SUBJECT: Question of Conflict of Interest with Respect to Proposed
Contract with [] Involving Ser-
vices of []

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1. On 19 September 1963, I met at NPIC with [] Assistant
for Plans and Development, NPIC; [], Chief, Logistics Branch,
Administrative Staff, NPIC; and []
[] of [] [] is house counsel.

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2. It developed that it is desired that [] "know how" be
used over the period of a year beginning about 1 October 1963 to assist
in organizing the recently established []
[]. A contract would be entered into for [] services; he
would remain the employee of [] he would have no adminis-
trative duties with the Agency and would not be involved in procurement.
He would be a resident scientist who, after a period of orientation,
would work out the problems given him on his own with minimal NPIC super-
vision. In addition to solving problems connected with the organization
and setting up of the [] he might also be called upon to evaluate
certain scientific instruments or to give an opinion as to whether equip-
ment had met specifications. [] said he was concerned with and
would like to have resolved by responsible authority the question of
whether or not the recent conflict of interest statute, P. L. 87-849,
which became effective 21 January 1963, would apply to this situation.
We felt that the crux of the problem lay in whether or not []
could be clearly considered to be a Government employee. If not, then
the statute would not apply. If so, then we might have to seek another
solution. We also discussed Department of Defense Directive Number
5500.10 of 1 June 1963 setting forth Rules for the Avoidance of Organi-
zational Conflicts of Interest. It was our opinion that []
activities would and should be such as to avoid the application of this
directive which states that, "The ultimate test should always be: Is
the contractor placed in a position where his judgment may be biased,
or where he has an unfair competitive advantage?"

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3. In an effort to resolve this question, I discussed the matter
in detail with Mr. Sol Lindenbaum, an attorney in the Office of Legal
Counsel, Department of Justice, room 5138, code 187, extension 2048.

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He said the proposed situation was an unusual one which he felt might be handled more simply by the Agency hiring [] direct for the required period but that if this could not be done conveniently, he would not maintain that [] is, in fact, a Government employee or subject to the conflict of interest statute. As a matter of fact, he stated that even if [] were actually a Government employee, he felt the statute would not apply since the thrust of the prohibitions contained in the statute is toward adversary proceedings and not toward this kind of a situation. In this connection, he referred to the legislative history to be found at 2 U. S. Congressional and Administrative News 1962, page 3852 et seq. which is Senate Report No. 2213. In addition, he furnished a copy of the committee print on Conflict of Interest dated 1 March 1963 containing Department of Justice Memorandum analyzing P. L. 87-849, compiled by the Senate Committee on the Judiciary. In further discussion of the statute, Mr. Lindenbaum stated that the one hundred and thirty days contained in the definition of a "special Government employee" refers to work days, thus twenty six weeks or six months. He further stated that once the bona fide intention had been established to set up an individual as a "special Government employee" for employment not to exceed one hundred and thirty days, the fact that circumstances might ultimately cause that period to be exceeded would not take the individual out of the category of "special Government employee" under the statute.

4. The gist of the foregoing was transmitted by telephone to [] at [] in []. He stated that he and other people he knew of in the industry were interpreting the conflict of interest statute much more broadly than that of a mere "adversary proceeding" concept. I feel that this is not unreasonable. However, Justice interprets the law and since Mr. Lindenbaum has stated that he will not quarrel with the Agency's approach to this problem or argue with our contention that [] is not a Government employee, I feel we had better let well enough alone. Matters of this kind can be handled better on an individual basis.

5. [] Contracting Officer, Procurement Division/OL, assigned to NPIC, who will negotiate the [] contract, was advised of the foregoing.

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6. A sterilized version of this memorandum was approved by
[redacted] Security Officer of NPIC, for personal transmittal
to [redacted] by [redacted] this week, together with a copy of the
Senate Committee print.

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[redacted]
Assistant General Counsel/OL

Distribution:

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OL/OGC [redacted] (23 Sep 63)